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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

In re the Marriage of KIM C. and
ROBERT D. ABEL, SR.

KIM C. ABEL,

Respondent,

v.

ROBERT D. ABEL, SR.,

Appellant.

C046781

(Super. Ct. No. FL03-845)

Robert D. Abel, Sr., (husband) and Kim C. Abel (wife) executed a marital settlement agreement (MSA), which became a judgment of dissolution of marriage. On appeal, husband, proceeding in pro. per., asserts that he executed the MSA under "great duress" and was "coerced" by his attorney into doing so without reading it. Having now read the MSA, he contends that it provides for an unequal division of community assets and liabilities. Accordingly, he asks this court to set aside the

judgment and equally divide the community assets and liabilities.

We need not address the merits of husband's claim because he never raised the issue in the trial court. (*Foothill Village Homeowners Assn. v. Bishop* (1999) 68 Cal.App.4th 1364, 1380.) According to the record, the trial court's penultimate act was to enter the judgment of dissolution of marriage on March 5, 2004.¹ At oral argument husband indicated he unsuccessfully contested the MSA in the trial court "about six months" after he filed the notice of appeal. However, on the record before us, husband never challenged the judgment or the underlying MSA in the trial court. No facts appear in the record of the "duress" or "coercion" of which husband complains. The resolution of his claim, by necessity, is a fact-based inquiry. Husband's failure to allege and substantiate his claim in the trial court precludes him from raising it for the first time on appeal. (*Ibid.*)

¹ The only action taken by the trial court following the entry of judgment on March 5, 2004, was to execute two orders in April 2004 to withhold income for child support.

DISPOSITION

The judgment is affirmed.

BUTZ, J.

We concur:

BLEASE, Acting P. J.

DAVIS, J.